



GCE

Law

Unit **G158**: Law of Torts Special Study

Advanced GCE

Mark Scheme for June 2017

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

© OCR 2017

These are the annotations, (including abbreviations), including those used in RM Assessor, which are used when marking

Annotation	Meaning
1	Q1&3 AP1
2	Q1&3 AP2
3	Q1&3 AP3
4	Q1&3 AP4
5	Q1 AP5
A2	Q2 AO2
C	Q1&3 Critical Point Q2 Case
CON	Q2 Bald case Q3 Conclusion
✗	ALL Not correct / Page checked for response
LNK	Q1 Linked case Q2 Link to source
	ALL Not Relevant or Too vague Also no response or response achieves no credit
REP	ALL Repetition/or 'noted' where a case has already been used in the response
SC	Q2 Synopticism
✓	Q1 Use of word 'significance', 'importance' etc Q2 AO1

Subject-specific marking instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

the requirements of the specification

these instructions

the exam questions (found in the exam paper which will have been emailed to you along with this document)

levels of assessment criteria *1 (found in the 'Levels of Assessment' grid at the back of this document)

question specific indicative content given in the 'Answer' column*2

question specific guidance given in 'Guidance' column*3

the 'practice' scripts*4 provided in RM Assessor and accompanying commentaries

*1 The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

*2 The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

*3 Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

*4 The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

Question		Indicative Content	Mark	Guidance												
1*		<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>CP1 The facts of this case involved a four-year-old child trespasser who was fatally crushed by a spoil conveyor on the site of a colliery. The colliery was in a fenced off field although there were large gaps in the fence. The field was frequently used as a short cut to a railway station and children would use it as a playground. The defendant was aware of this but made no real attempt to ensure that people did not come onto the land</p> <p>CP2 The court held that the mine owner owed no duty of care to trespassers to ensure that they were safe when coming onto the land. The only duty was not to inflict harm wilfully</p> <p>CP3 In the case Viscount Dunedin made the position clear when he stated "had the child been a licensee, I would have held the defenders liable; if the complainer had been an adult. But, if the person is a trespasser, then the only duty the proprietor has towards him is not maliciously to injure him"</p> <p>LC1 This case can be linked to the 1972 case of <i>British Railways Board v Herrington</i>. Here a six year old boy was electrocuted when he wandered from a park onto a live railway line. Like <i>Addie</i>, the railway line was surrounded by a fence which had a gap that was used frequently as a short cut to the park. The defendant was aware of the gap in the fence but had failed to do anything about it. Under <i>Addie</i> no duty of care was owed to trespassers. However, the House of Lords departed from their previous decision</p>	12	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11–12</td> </tr> <tr> <td>4</td> <td>9–10</td> </tr> <tr> <td>3</td> <td>7–8</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>CP – Max 3 marks Linked to the material point/ratio – 1 mark is available for that facts of the case but these are not essential to get full marks. An accurate source <u>and</u> line reference is adequate for the facts of the case to receive the one mark. Where given, the ratio of the case needs to be given an AO2 slant to get a mark</p> <p>AP – Max 6 marks for any Applied Point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p>LNK – Max 3 marks for a relevant, linked case The case must be linked for a particular point. Marks can be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p>	AO2 Levels	AO2 Marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3
AO2 Levels	AO2 Marks															
5	11–12															
4	9–10															
3	7–8															
2	4–6															
1	1–3															

Question	Indicative Content	Mark	Guidance
	<p>and held that the railway company did owe a duty of common humanity to trespassers</p> <p>LC3 The <i>Herrington</i> case is also noted for using the 1966 Practice Statement to overrule <i>Addie</i>. This demonstrates not only that <i>Addie</i> was a harsh and out-of-date precedent but that the 1957 Act had not dealt properly with the issue of trespassers. Despite agreeing, the five Law Lords in <i>Herrington</i> adopted very different reasoning and this confusion, in part, led to the Law Commission being asked to report on this area of law (<i>Report on Liability for Damage or Injury to Trespassers</i>, Cmnd 6428 (1976))</p> <p>LC2 The case could also be linked to more modern cases on child trespassers. For example, whilst the 1984 Act now imposes a duty of common humanity towards trespassers, the courts have limited this liability where, for example, the child should have appreciated the risk they were taking as seen in <i>Keown v Coventry Healthcare Trust</i></p> <p>AP1 The decision in <i>Addie</i> must be seen in the context of the times when it was heard. Its harsh attitude towards children would no longer prevail. Changes in social and moral values have given rise to legal changes which place a greater obligation on occupiers of land towards such vulnerable parties</p> <p>AP2 Indeed, according to source 6 <i>Addie</i> represents a 'draconian position' from which the law has since followed a 'humanising trend'</p> <p>AP3 Source 6 also asserts that the case reflects Victorian jurisprudence which had an over-zealous preoccupation with the sanctity of real property rights even over human life and that the judgment in <i>Addie</i> is vilified as</p>		

Question		Indicative Content	Mark	Guidance										
		<p>symptomatic of this inhumane attitude</p> <p>AP4 Another aspect of <i>Addie</i> mentioned in source 6 is the changing nature of the built environment. People were often living alongside industrialised places of work. According to source 6 "The occupiers' liability cases of the industrial era (of which <i>Addie</i> is a classic example) were wrestling with the spatial consequences of industrialisation."</p> <p>AP5 Source 6 states: "The child trespassers lived locally and played locally. [T]he location and nature of such play was "intertwined with work" --- the contemporary spatial demarcation between places of play and places of work being a later twentieth century conceptual invention."</p> <p>AP6 Credit any other relevant point. Examples might include analysis of the judgment and its reasoning or any relevant links to other cases.</p>												
		<p>Assessment Objective 3 - Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>10–12</td> <td>4</td> </tr> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Mark	10–12	4	7–9	3	4–6	2	1–3	1
AO2 Marks	AO3 Mark													
10–12	4													
7–9	3													
4–6	2													
1–3	1													

Question		Indicative Content	Mark	Guidance	
2*		<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Describe the general provisions of the Occupiers' Liability Acts 1957 & 1984</p> <p>Occupiers' liability concerns liability owed for damage arising from the state of the premises. Liability arises under the Occupiers' Liability Act 1957 for lawful visitors and the Occupiers' Liability Act 1984 for trespassers</p> <p>Identify that the 1957 Act involves a common duty of care owed to visitors under s.2(1) and that the scope of that duty (under s.2(2)) is to keep the visitor reasonably safe for the purposes for which he is invited to enter</p> <p>Explain that a lesser 'duty of common humanity' is owed under s.1(1) of the 1984 Act (duty for injury due to the state of the premises or things done or things omitted to be done) and that under s.1(3) (a) the occupier has to be aware of the danger (<i>Rhind v Astbury Water Park</i>), (b) have reasonable grounds to believe C is in the vicinity (<i>Swain v Natui Ram Pun</i>) and (c) the risk is one where he might reasonably be considered to have offered C some protection (<i>Tomlinson v Congleton BC, Higgs v Foster, White v St Albans City Council</i>)</p> <p>Explain that the duty owed under s.1(8) of the 1984 Act covers injury but does not extend to property (<i>Tomlinson v Congleton BC</i>)</p> <p>Explain that s.2(3)(b) of the 1957 Act means that an</p>	16	AO1 Levels	AO1 Marks
				5	14–16
				4	11–13
				3	8–10
				2	5–7
				1	1–4
				<p>Level 5</p> <p>Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4</p> <p>Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*.</p> <p>Level 3</p> <p>Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant</p>	

Question	Indicative Content	Mark	Guidance
	<p>occupier can expect that a person who enters in the exercise of their calling will appreciate and guard against any special risks ordinarily incident to it (<i>General Cleaning Contractors v Christmas, Roles v Nathan</i>)</p> <p>Identify that an occupier can be relieved of liability under s2(4) of the 1957 Act if an independent contractor is at fault for the damage – but it must be reasonable to hire one (<i>Haseldine v Daw</i>); a competent contractor must be chosen (<i>Ferguson v Welsh</i>); and the work inspected if it is possible (<i>Haseldine v Daw, Woodward v Mayor of Hastings</i>)</p> <p>Identify that under s.1(2) of the 1957 Act a visitor can be an invitee, a licensee, or someone with a contractual or legal right to enter but under s.2(4)(a) a visitor going beyond the terms of his entry may become a trespasser (<i>The Calgarth</i>) and then be subject to the 1984 Act</p> <p>Explain that the term 'occupier' is not in the Act but is broadly defined in common law and can include anyone who is in possession or control of premises (<i>Wheat v Lacon</i>) and there can be more than one occupier</p> <p>Explain that premises are broadly defined in s.1(3) of the 1957 Act as demonstrated by (<i>Wheeler v Copas</i>)</p> <p>Explain that under the 1984 Act, an occupier may be able to rely on the effect of warnings as a defence (s.1(4)) (<i>Westwood v Post Office</i>) and the possibility of <i>volenti</i> under s.1(5)(6) (<i>Ratcliffe v McConnell</i>). Furthermore, an occupier is entitled to expect that a trespasser will not participate in foolhardy escapades (<i>Donoghue v Folkestone Properties</i>)</p> <p>Explain that an occupier is liable for foreseeable harm even if the precise damage or the precise circumstances in which</p>		<p>concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question	Indicative Content	Mark	Guidance
	<p>the harm occurs is not foreseeable (<i>Jolley v London Borough of Sutton</i>) and identify also that the occupier can exclude or modify the duty but consider the effect of UCTA s2(1)</p> <p>Describe the provisions in respect of children in the Occupiers' Liability Acts 1957 & 1984</p> <p>Explain that children are owed a higher and 'special' duty of care under section 2(3)(a) of the 1957 Act (<i>Phipps v Rochester Corporation, Glasgow Corporation v Taylor, Jolley v London Borough of Sutton, Bourne Leisure v Marsden, Simkiss v Rhondda Borough Council, Perry v Butlins Holiday World</i>)</p> <p>Identify the basic acceptance that a child is more at risk and that the standard of care is measured subjectively rather than objectively (s.2(3) & <i>Moloney v Lambeth BC</i>)</p> <p>Identify that an occupier must be prepared for children to be less careful than adults. If the occupier allows a child to enter the premises then the premises must be reasonably safe for a child of that age (<i>Perry v Butlins Holiday World, Jolley</i>)</p> <p>Explain the approach to allurements (<i>Tomlinson</i>). A child is less likely to appreciate the risks an adult would and may be attracted to the danger (<i>Glasgow Corporation, Jolley</i>). However, the mere existence of an allurement on its own is not sufficient grounds for liability (<i>Liddle v Yorkshire CC</i>)</p> <p>Identify that the distinction between adults and children is one of 'fact and degree' where their understanding of risk is concerned. Thus in <i>Keown v Coventry Healthcare Trust</i> an 11 year-old should have appreciated the risk</p>		

Question	Indicative Content	Mark	Guidance
	<p>Explain also that case law identifies that the occupier may expect parents to supervise young children (<i>Phipps v Rochester Corporation</i>)</p> <p>Identify that an occupier is entitled to assume that very young children will be accompanied by someone looking after them (<i>Phipps, Bourne Leisure v Marsden, Simkiss v Rhondda DC</i>) and limitations on this duty (<i>Simonds v Isle of Wight</i>)</p> <p>Explain that there is a broad view of foreseeable harm so that the occupier need not foresee the specific harm (<i>Jolley v Sutton LBC</i>)</p> <p>Explain that under the 1984 Act a duty will not generally be owed in respect of obvious dangers (<i>Donoghue v Folkestone Properties</i>). But, if there are reasons to expect the presence of a child trespasser, then the same danger may give rise to a duty unless the child should be mature enough to appreciate the danger (<i>Young v Kent CC, Titchener v BRB, Mann v Northern Electric Distribution</i>)</p> <p>Explain that a series of recent post-<i>Tomlinson</i> cases such as <i>Mann v Northern Electric Distribution, Baldacchino v West Wittering Council</i> and <i>Keown</i> have demonstrated that in some circumstances injuries arise out of genuine accidents and the responsibility rests with the unfortunate injured claimant.</p>		

Question		Indicative Content	Mark	Guidance												
		<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss the way the law has developed the 'special duty' owed to children under section 2(3)(a) of the 1957 Act which gives extra protection to the most vulnerable but, without the principle in <i>Phipps</i> might prove unfair to the occupier who is now placed under a higher level of care</p> <p>Discuss the way terms such as 'occupier' and 'premises' have been interpreted broadly allowing the law to develop in a way that is favourable to claimants</p> <p>Consider that whilst liability is restricted to the state of the premises, this does not exclude occupiers' liability in other areas such as negligence demonstrating that the law has developed alongside broader developments</p> <p>Consider that both Acts allow the occupier to try and reduce or exclude liability subject to certain restrictions (UCTA) but such restriction are limited in their application to children depending on their age</p> <p>Discuss problems associated with the range of maturity demonstrated by different children of different ages and from different backgrounds. How can the law decide when or where a child should take responsibility for themselves or how parents or occupiers determine this as well? Protection depends on the age of the child and the case law has developed with an unclear legal distinction between 'little children' and 'bigger children'. Other key issues regarding whether the child realised the risk. Protection will depend on the individual child – taking into account age, experience and knowledge of the risk</p>	14	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13–14</td> </tr> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <ul style="list-style-type: none"> • Level 5 • Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content. • • Level 4 • Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote. • • Level 3 • Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote. • • Level 2 • Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote. • • Level 1 • Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote. • 	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Levels	AO2 Marks															
5	13–14															
4	10–12															
3	7–9															
2	4–6															
1	1–3															

Question	Indicative Content	Mark	Guidance
	<p>Discuss whether it is fair to expect occupiers to second guess the unpredictable nature of children?</p> <p>Discuss the role of policy – can and should the law protect everyone from everything?</p> <p>Consider the role of social, moral, technological and built environment changes on the way children behave and our expectations of them – how have such factors influenced the development of the law in this area?</p> <p>Consider whether the broad interpretation of foreseeability of risk has developed to offer greater protection to children (<i>Jolley</i>)</p> <p>Consider the decision in <i>Phipps v Rochester Corporation</i> which means that the occupier is entitled to rely on parents to supervise young children. Although the degree of parental supervision may be argued to have changed over time so that there are limitations on this duty (<i>Glasgow Corporation v Taylor, Jolley v London Borough of Sutton, Bourne Leisure v Marsden, Simkiss v Rhondda Borough Council, Perry v Butlins Holiday World, Simonds v Isle of Wight</i>)</p> <p>However, contrast this with <i>Bourne Leisure v Marsden</i>, where the CoA had cause to revisit Phipps. There was no breach under the 1957 Act as it would be impractical to fence every source of hazard and clearer information about the source of the hazards would have made no difference. Unless there is a reason to expect unaccompanied children to encounter a danger, there is no duty to warn of dangers that would be obvious to a parent or guardian</p> <p>Discuss the evolution of the law relating to occupiers' liability towards children by referring to a variety of influences and</p>		<p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (NB conclusion does not need to appear at end).</p>

Question		Indicative Content	Mark	Guidance
		<p>other potential points:</p> <ul style="list-style-type: none"> • Consider the harshness of the 'no duty' dictum in <i>Addie</i> • Refer to the fact that the pre-1957 Act case law is often referred to in interpreting s.2(3)(a) but this case law is inconsistent. • Consider the fact that the 1957 Act only applied to lawful visitors and operated harshly on children and this, <i>inter alia</i>, led to the 'duty of humanity' advanced in <i>Herrington</i> • In turn this case and other shortcomings led to the Law Commission, <i>Report on Liability for Damage or Injury to Trespassers</i>, Cmnd 6428 (1976) • Eventually this was enacted in the 1984 Act with its qualified duty of care • Discuss the post-<i>Tomlinson</i> and <i>Mann</i> cases such as <i>Keown</i> and <i>Baldacchino</i> which seem to represent a hardening of attitudes towards risk-taking claimants including 'older children' • The theme of other recent case law (<i>Bourne</i>) is that some tragic accidents simply occur without culpability • Consider the deterrent ambitions of the legislation and whether the restrictions in the post-<i>Tomlinson</i> cases are just and fair? • Discuss the growth of more dangerous premises, the changing nature of the built environment and the difficulty of making children appreciate danger • Consider the whether the law here reflects changing attitudes to freedom of the individual and civil liberties issues - Lord Hobhouse (in <i>Mann</i>) confirmed that 'it was not and should never be the policy of the law to require the protection of the foolhardy or reckless few, and to interfere with the enjoyment by the remainder of society of their liberties and amenities to which they are entitled' 		

Question		Indicative Content	Mark	Guidance										
		Reach any sensible and reasoned conclusion. If people want to undertake risky behaviour then that is their affair. Paternalistic landowners may wish to prohibit or limit such activities for their own reasons but the law does not require him to do so. Landowners should take some comfort from the fact that the law does state that it would be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities that they freely choose to undertake upon the land (<i>Mann v Northern Electric Distribution</i>).												
		Assessment Objective 3 - Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>24–30</td> <td>4</td> </tr> <tr> <td>17–23</td> <td>3</td> </tr> <tr> <td>9–16</td> <td>2</td> </tr> <tr> <td>1–8</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Mark	24–30	4	17–23	3	9–16	2	1–8	1
AO1 + AO2 Marks	AO3 Mark													
24–30	4													
17–23	3													
9–16	2													
1–8	1													

Question		Indicative Content	Mark	Guidance																		
3		<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Law on occupiers' liability as stated above for question 2 and particular cases of relevance as indicated</p>	10	<table border="1"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table>	Mark Levels	AO1 Marks	AO2 Marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4
Mark Levels	AO1 Marks	AO2 Marks																				
5	9–10	17–20																				
4	7–8	13–16																				
3	5–6	9–12																				
2	3–4	5–8																				
1	1–2	1–4																				
		<p>Assessment Objective 2 – Analysis, Evaluation and Application</p> <p>In the case of (a):</p> <p>AP1 Identify Xena as a lawful visitor. She is a paying guest at the hotel and, therefore, has an express licence to be on the premises and to use the sauna so she falls under the 1957 Act.</p> <p>AP2 Identify Midshire Manor Hotel as the occupier since they have possession and control over the premises.</p> <p>AP3 Identify that the hotel and the sauna as premises. Therefore Midshire Manor Hotel owes a duty to keep Xena safe for the purpose of her visit and that this includes the use of facilities such as the sauna.</p> <p>CP1 Identify that Midshire Manor Hotel can avoid liability if Xena's injuries are the fault of Superb Saunas s.2(4). Three requirements: 1. It is reasonable to use skilled contractors for specialist task. 2. It would appear that the hotel has hired competent contractors since they are specialists. 3. Although Midshire Manor Hotel might have tested a simple electronic device like a light bulb, a sauna is a more complex device and if Midshire Manor Hotel could not reasonably be expected to inspect the work of Superb Saunas.</p>	20	<p>Marks should be awarded as follows (per part question):</p> <table border="1"> <thead> <tr> <th>Mark Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the critical point (CP) • Max 6 marks for applied points (AP) • Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON) • • In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*. • • Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered. <p>* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).</p>	Mark Levels	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2						
Mark Levels	(a), (b) or (c)																					
5	9–10																					
4	7–8																					
3	5–6																					
2	3–4																					
1	1–2																					

	<p>CP1a Credit alternative line of reasoning (as above) where candidate concludes that it is simple for Midshire Manor Hotel to simply test the sauna themselves.</p> <p>CON Midshire Manor Hotel would appear to be able to avoid liability by blaming Superb Saunas. However, Xena should still be able to recover damages from Superb Sauna's public liability insurance.</p>	
	<p>In the case of (b):</p> <p>AP1 Identify that Yvonne is a lawful visitor in the hotel but became a trespasser when she exceeded her permission by entering an unauthorised part of the premises. Therefore, she will have no claim under the 1957 Act but may have a claim under the 1984 Act.</p> <p>AP2 Identify Midshire Manor Hotel as the occupier since they have possession and control over the premises.</p> <p>AP3 Consider whether the sign on the door amounts to a warning since this may be an effective means of avoiding liability to an adult trespasser. However, in this situation the sign gives no indication of any danger (particularly the specific danger of being dark without an identity badge) and, therefore, unlikely to amount to a warning.</p> <p>CP Apply the three requirements of s.1(3): 1. The hotel would be aware that an unlit room full of cleaning equipment would pose a danger; 2. The hotel have reasonable grounds to believe that guests are in the vicinity; and 3. The hotel might have dealt with the risk by simply keeping the room locked or adding a more specific warning.</p> <p>CON Midshire Manor Hotel would appear to be liable since</p>	

		<p>the elements of s.1(3) are satisfied. Yvonne is not <i>volenti</i> as she is unaware of the risk and could not have freely accepted it. However, the Law Reform (Contributory Negligence) Act 1945 might impact on Yvonne's claim.</p>		
		<p>In the case of (c):</p> <p>AP1 Identify Zoe as a lawful visitor. She is a paying guest at the hotel and, therefore, has an express licence to be on the premises and to walk in the hotel gardens so she falls under the 1957 Act.</p> <p>AP2 Identify Midshire Manor Hotel as the occupier since they have possession and control over the premises.</p> <p>AP3 Identify that the hotel and the grounds are 'premises'. Therefore Midshire Manor Hotel owes a duty to keep Zoe safe for the purpose of her visit and that this includes the use of outdoor facilities such as the gardens.</p> <p>CP Identify that the dangerous swan can be classed as part of the 'state of the premises'. Midshire Manor Hotel would appear to be in breach of s.2(2) since they know about the risk of harm and have done nothing about it. The liability for the injuries would be a foreseeable form of harm.</p> <p>CON Midshire Manor Hotel would appear to be liable and neither the Law Reform (Contributory Negligence) Act 1945, nor <i>volenti</i> would appear to have any relevance here.</p>		

APPENDIX 1 – Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by Responses at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by Responses at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate Responses will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate Responses will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate Responses will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998
Facsimile: 01223 552627
Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office: 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

© OCR 2017

